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HOUSE BILL 409

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Ben Lujan

AN ACT

RELATING TO HOUSING; ENACTING THE NEW MEXICO HOUSING TRUST FUND ACT; CREATING THE NEW MEXICO HOUSING TRUST FUND; CREATING AN ADVISORY COMMITTEE; PROVIDING CERTAIN POWERS TO THE NEW MEXICO MORTGAGE FINANCE AUTHORITY; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 9 of this act may be cited as the "New Mexico Housing Trust Fund Act".

Section 2. [NEW MATERIAL] PURPOSE.--The purpose of the New Mexico Housing Trust Fund Act is to provide flexible funding for housing initiatives in order to produce significant additional housing investment in the state.

Section 3. [NEW MATERIAL] DEFINITIONS.--As used in the .154205.1

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1 New Mexico Housing Trust Fund Act:

2 A. "affordable housing" means residential housing
3 primarily for persons or households of low or moderate income;

4 B. "authority" means the New Mexico mortgage
5 finance authority;

6 C. "committee" means the New Mexico housing trust
7 fund advisory committee;

8 D. "fund" means the New Mexico housing trust fund;

9 E. "persons of low or moderate income" means
10 persons and households within the state who are determined by
11 the authority to lack sufficient income to pay enough to cause
12 private enterprise to build an adequate supply of decent, safe
13 and sanitary residential housing in their locality or in an
14 area reasonably accessible to their locality and whose incomes
15 are below the income levels established by the authority to be
16 in need of the assistance made available by the New Mexico
17 Housing Trust Fund Act, taking into consideration, without
18 limitation, such factors as defined under that act; and

19 F. "residential housing" means any building,
20 structure or portion thereof that is primarily occupied, or
21 designed or intended primarily for occupancy, as a residence by
22 one or more households and any real property that is offered
23 for sale or lease for the construction or location thereon of
24 such a building, structure or portion thereof. "Residential
25 housing" includes congregate housing, manufactured homes and

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1 housing intended to provide or providing transitional or
2 temporary housing for homeless persons.

3 Section 4. [NEW MATERIAL] NEW MEXICO HOUSING TRUST FUND
4 CREATED.--

5 A. The "New Mexico housing trust fund" is created
6 in the authority. The fund shall consist of all distributions
7 and appropriations made to the fund. Earnings of the fund
8 shall be credited to the fund, and unexpended and unencumbered
9 balances in the fund shall not revert to any other fund. The
10 authority shall be the trustee for the fund, and the state
11 investment council shall be the investment agent for the fund.

12 B. The fund shall consist of revenue from the
13 following recurring sources:

14 (1) appropriations and transfers from the
15 general fund;

16 (2) any other money appropriated or
17 distributed to the fund; or

18 (3) any private contributions to the fund.

19 C. Money in the fund is appropriated to the
20 authority for the purposes of carrying out the provisions of
21 the New Mexico Housing Trust Fund Act.

22 Section 5. [NEW MATERIAL] ADVISORY COMMITTEE CREATED.--

23 A. The "New Mexico housing trust fund advisory
24 committee" is created. The committee shall consist of no fewer
25 than seven and no more than eleven persons appointed by the

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1 authority's governing body representing the state
2 geographically and affordable housing interests.

3 B. Members shall serve at the pleasure of the
4 authority's governing body, and vacancies shall be filled by
5 the authority's governing body. Members of the committee shall
6 be eligible for reappointment.

7 C. The committee shall be advisory to the authority
8 and shall be subject to oversight by the Mortgage Finance
9 Authority Act oversight committee.

10 D. The committee shall review all project
11 applications and make recommendations to the authority for
12 funding them. The committee shall not be involved in or
13 advisory to the authority in matters relating to the investment
14 of the fund.

15 E. The committee shall adopt rules regarding:

16 (1) the time, place and procedures of
17 committee meetings; and

18 (2) the procedures for the review of and
19 standards for recommending applications for loans or grant
20 projects.

21 Section 6. [NEW MATERIAL] AWARD OF FUNDS--
22 ACCOUNTABILITY.--

23 A. Trust funds shall be awarded on a competitive
24 basis. The authority's staff shall work with the committee to
25 develop an application and applicant scoring mechanism that

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1 encourages applicants to develop solutions that are responsive
2 to local needs and are consistent with sound housing policy.

3 B. The authority's governing body shall be
4 responsible for ensuring that on an annual basis the total
5 funds awarded for housing activities attract at least three
6 times as much funding from other sources.

7 Section 7. [NEW MATERIAL] USE OF FUNDS--ELIGIBLE
8 ACTIVITIES.--Money from the fund and matching funds from other
9 sources may be used to finance in whole or in part any loans or
10 grant projects that will provide affordable housing. No more
11 than five percent of the fund shall be used annually for
12 expenses of administering the fund.

13 Section 8. [NEW MATERIAL] CONFLICT WITH FEDERAL
14 REQUIREMENTS.--If any part of the New Mexico Housing Trust Fund
15 Act is found to be in conflict with federal requirements that
16 are a prescribed condition to the allocation of federal funds
17 to the state, the conflicting part of that act is inoperative
18 solely to the extent of the conflict and with respect to the
19 agencies directly affected, and this finding does not affect
20 the operation of the remainder of that act in its application
21 to the agencies concerned. The rules adopted pursuant to the
22 provisions of the New Mexico Housing Trust Fund Act shall meet
23 those federal requirements that are a necessary condition to
24 the receipt of federal funds by the state.

25 Section 9. [NEW MATERIAL] MATCHING FUNDS.--Money from the

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1 fund may be used to match federal, local or private money to be
2 used for projects authorized under the New Mexico Housing Trust
3 Fund Act.

4 Section 10. Section 58-18-5 NMSA 1978 (being Laws 1975,
5 Chapter 303, Section 5, as amended) is amended to read:

6 "58-18-5. POWERS OF THE AUTHORITY.--The authority shall
7 have all the powers necessary or convenient to carry out and
8 effectuate the purposes and provisions of the Mortgage Finance
9 Authority Act, including but without limiting the generality of
10 the foregoing, the power:

11 A. to sue and be sued;

12 B. to have a seal and alter it at pleasure;

13 C. to make and alter bylaws for its organization
14 and internal management;

15 D. to appoint other officers, agents and employees,
16 prescribe their duties and qualifications and fix their
17 compensation;

18 E. to acquire, hold, improve, mortgage, lease and
19 dispose of real and personal property for its public purposes;

20 F. subject to the provisions of Section 58-18-6
21 NMSA 1978, to make loans, and contract to make loans, to
22 mortgage lenders;

23 G. subject to the provisions of Section 58-18-7
24 NMSA 1978, to purchase, and contract to purchase, mortgage
25 loans from mortgage lenders;

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1 H. to procure or require the procurement of a
2 policy of group or individual life insurance or disability
3 insurance or both to insure repayment of mortgage loans in
4 event of the death or disability of the borrower and to pay any
5 premiums for the policy;

6 I. to procure insurance against any loss in
7 connection with its operations, including without limitation
8 the repayment of any mortgage loan, in amounts and from
9 insurers, including the federal government, that the authority
10 deems necessary or desirable; to procure liability insurance
11 covering its members, officers and employees for acts performed
12 within the scope of their authority as members, officers or
13 employees; and to pay any premiums for insurance procured;

14 J. subject to any agreement with bondholders or
15 noteholders:

16 (1) to renegotiate any mortgage loan or any
17 loan to a mortgage lender in default;

18 (2) to waive any default or consent to the
19 modification of the terms of any mortgage loan or any loan to a
20 mortgage lender and otherwise exercise all powers with respect
21 to its mortgage loans and loans to mortgage lenders that any
22 private creditor may exercise under applicable law; and

23 (3) to commence, prosecute and enforce a
24 judgment in any action or proceeding, including without
25 limitation a foreclosure proceeding, to protect or enforce any

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1 right conferred upon it by law, mortgage loan agreement,
2 contract or other agreement; and in connection with any such
3 proceeding, to bid for and purchase the property or acquire or
4 take possession of it and, in such event, complete, administer,
5 pay the principal of and interest on any obligations incurred
6 in connection with the property and operate or dispose of and
7 otherwise deal with the property in such manner as the
8 authority may deem advisable to protect its interests therein;

9 K. to make and execute contracts for the
10 administration, servicing or collection of any mortgage loan
11 and pay the reasonable value of services rendered to the
12 authority pursuant to such contracts;

13 L. to fix, revise from time to time, charge and
14 collect fees and other charges in connection with the making of
15 mortgage loans, the purchasing of mortgage loans and any other
16 services rendered by the authority;

17 M. subject to any agreement with bondholders or
18 noteholders, to sell any mortgage loans at public or private
19 sale at such prices and on such terms as the authority shall
20 determine;

21 N. to borrow money and to issue bonds and notes
22 that may be negotiable and to provide for the rights of the
23 holders thereof;

24 O. to arrange for guarantees or other security,
25 liquidity or credit enhancements in connection with its bonds,

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1 notes or other obligations by the federal government or by any
2 private insurer or other provider and to pay any premiums
3 therefor;

4 P. subject to any agreement with bondholders or
5 noteholders, to invest money of the authority not required for
6 immediate use, including proceeds from the sale of any bonds or
7 notes:

8 (1) in obligations of any municipality or the
9 state or the United States of America;

10 (2) in obligations the principal and interest
11 of which are guaranteed by the state or the United States of
12 America;

13 (3) in obligations of any corporation wholly
14 owned by the United States of America;

15 (4) in obligations of any corporation
16 sponsored by the United States of America that are or may
17 become eligible as collateral for advances to member banks as
18 determined by the board of governors of the federal reserve
19 system;

20 (5) in certificates of deposit or time
21 deposits in banks qualified to do business in New Mexico,
22 secured in the manner, if any, as the authority shall
23 determine;

24 (6) in contracts for the purchase and sale of
25 obligations of the types specified in this subsection; or

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1 (7) as otherwise provided in any trust
2 indenture or a resolution authorizing the issuance of the bonds
3 or notes;

4 Q. subject to any agreement with bondholders or
5 noteholders, to purchase bonds or notes of the authority at the
6 price as may be determined by the authority or to authorize
7 third persons to purchase bonds or notes of the authority;
8 bonds or notes so purchased shall be canceled or resold, as
9 determined by the authority;

10 R. to make surveys and to monitor on a continuing
11 basis the adequacy of the supply of:

12 (1) funds available in the private banking
13 system in the state for affordable residential mortgages; and

14 (2) adequate, safe and sanitary housing
15 available to persons of low or moderate income in the state and
16 various sections of the state;

17 S. to make and execute agreements, contracts and
18 other instruments necessary or convenient in the exercise of
19 the powers and functions of the authority under the Mortgage
20 Finance Authority Act;

21 T. to employ architects, engineers, attorneys
22 (other than and in addition to the attorney general of the
23 state), accountants, housing, construction and financial
24 experts and such other advisors, consultants and agents as may
25 be necessary in its judgment and to fix and pay their

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1 compensation;

2 U. to contract for and to accept any gifts or
3 grants or loans of funds or property or financial or other aid
4 in any form from the federal government or from any other
5 source and to comply, subject to the provisions of the Mortgage
6 Finance Authority Act, with the terms and conditions thereof;

7 V. to maintain an office at such place in the state
8 as it may determine;

9 W. subject to any agreement with bondholders and
10 noteholders, to make, alter or repeal, subject to prior
11 approval by the Mortgage Finance Authority Act oversight
12 committee, hereby created, to be composed of four members
13 appointed by the president pro tempore of the senate and four
14 members appointed by the speaker of the house of
15 representatives, such rules and regulations with respect to its
16 operations, properties and facilities as are necessary to carry
17 out its functions and duties in the administration of the
18 Mortgage Finance Authority Act;

19 X. to make, purchase, guarantee, service and
20 administer mortgage loans for residential housing for the
21 purposes set forth in the Mortgage Finance Authority Act where
22 private banking channels and private enterprise, unaided, have
23 not, cannot or are unwilling to make, purchase, guarantee,
24 service or administer the loans;

25 Y. to act as trustee and administer the land title

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1 trust fund created pursuant to Section 58-28-3 NMSA 1978;
2 Z. to act as trustee and administrator pursuant to
3 the Low-Income Housing Trust Act; [~~and~~]

4 AA. to act as trustee and statewide administrator
5 of the New Mexico housing trust fund pursuant to and to receive
6 funds under the New Mexico Housing Trust Fund Act;

7 BB. to act as a governmental entity or a qualifying
8 grantee or as an intermediary for a governmental entity or a
9 qualifying grantee pursuant to the Affordable Housing Act; and

10 [~~AA-~~] CC. to do any and all things necessary or
11 convenient to carry out its purposes and exercise the powers
12 given and granted in the Mortgage Finance Authority Act."

13 Section 11. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is July 1, 2005.